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November 25, 2002

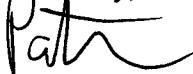
Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

*Ex Parte*  
CC Docket Nos. 96-98, 01-338

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, this will provide notice that on November 22, 2002, David Gusky, Executive Director, Association for Communications Enterprises; Jerry Finefrock, Vice President, Regulatory Affairs, LDMI Telecommunications; Robert Hale, Sr., Chairman and Robert Hale, Jr., CEO, Granite Telecommunications, Inc., and William Wilhelm of this firm and the undersigned met with William Maher, Richard Lerner, and Robert Tanner of the Wireline Competition Bureau concerning issues in the above-captioned proceeding. We presented the views set forth in the attached document which was provided at the meeting.

Sincerely,



Patrick J. Donovan

Cc: Christopher Libertelli  
Jordan Goldstein  
Matthew Brill  
Dan Gonzalez  
William Maher  
Jeffrey Carlisle

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Richard Lerner  
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# A Market-Based Approach to ULS and UNE-P Transition

ASCENT

November 22, 2002

# The Need

- An economics based approach that allows for the emergence of new CLECs, and the expansion of existing CLECs into new markets -- not only now, but well into the future.
- An approach that leads to the eventual transition away from UNE-P, in increasing proportions of each LATA, and the U.S.

# The Conceptual Framework - 1

- Before ULS and UNE-P may be eliminated in a market, 5 competitive sources of wholesale services (ULS and UNE-P-like service) must exist in that market, at TELRIC-based rates.
- A “market” is defined as a central office (wire center), e.g., DTRTMIMN, as defined by the traditional ILEC (LERG database).

# The Conceptual Framework - 2

- The Incumbent must have been shown to provide to CLECs an automated, timely, and economic process for transferring or migrating former incumbent subscribers to competitor networks and switches at commercial volumes in a manner that is entirely transparent to subscribers (e.g., hot cut and loop impairment issues).

# The Conceptual Framework - 3

- The FCC should establish appropriate nationwide guidelines.
- The States, best poised to evaluate market-by-market factors within their borders, should have the responsibility to manage the details of the transition process, establish detailed rules, and police the process.

# The Conceptual Framework - 4

- This process must apply equally to residence and business ULS/UNE-P lines.
- There are over 1,000,000 business UNE-P lines in the U.S. today. For these customers, a TELRIC-based wholesale offering has been their first opportunity, ever, to achieve local phone savings.
- To arbitrarily exclude businesses from the plan would be discriminatory and unlawful.



# The Conceptual Framework - 5

- In thousands of wire centers in the U.S., transport from other than the ILEC is not currently available, and may not be available economically for many years. Thus, to insure that a viable wholesale market can exist for those wire centers, with CLECs establishing colocations connected via transport to a CLEC switch many miles away, the incumbents must continue to provide wire center to CLEC switch transport services, at TELRIC-based rates.

# The Conceptual Framework - 6

- Each CLEC holding itself out to provide wholesale ULS/UNE-P like services in a market (wire center) must operate a switch, connected to colocation facilities in that wire center, and provide wholesale services to CLECs at economically-reasonable (TELRIC-based) rates.
- The wholesale CLEC must not have monopoly power with respect to retail or business local markets.
- The five independent wholesale suppliers in that market (wire center) are all likely to remain in the market and financially stable
- Sufficient switching capacity and capacity in the colo are available to meet CLEC needs in the market.

# The Conceptual Framework - 7

- The wholesale CLECs in the market have sufficient personnel/resources for reliable operation.
- CLEC customers can be transferred seamlessly, ILEC to wholesale CLEC to retail CLEC
- The wholesale suppliers truly serve the need of both small retail CLECs and larger CLECs needing T1-level or ISDN-PRI level interfaces to customer phone systems, etc.

# The Conceptual Framework - 8

- A wholesale CLEC ULS/UNE-P market does not exist today.
- But with regulatory certainty, and utility commission encouragement, the inexorable action of the free enterprise system will bring such a wholesale market into being, from coast to coast.

# Why A Market-Based Test

- Evaluation of market competitiveness is well founded in anti-trust law.
- Relates more directly and evenly to the free enterprise system; less arbitrary than other approaches.

# Why A Test At the Wire Center Level

- Meets the granularity requirement of the Court.
- Is consistent to existing ILEC definitions of service (a CLLI code; a central office area, defined in existing maps): no confusion.
- Assures a definition where service is truly available as expected:
  - A test declaring that the “Los Angeles market” is open to competition is not valid, if wholesale CLEC service is not available in Santa Monica;
  - A test declaring that “Santa Monica” is open to competition is not valid, if wholesale service is available in only one Santa Monica wire center, not the other three.

# Other Advantages of the Plan

- Provides market and regulatory certainty to CLEC wholesale and CLEC retail providers alike.
- Only with market and regulatory certainty will a true wholesale switching market develop.
- Provides encouragement to the ILEC to help foster that true competitive wholesale switching market, so the ILEC can eliminate its need to provide UNE-P in that market.

# How A State Administers The Plan

- Conducts state-wide assessment of TELRIC rates and other qualifications of each prospective wholesale ULS/UNE-P provider
- Solicits lists from each qualified wholesale provider, of the wire centers (CLLIs) in which they provide service
- Distributes that wholesale carrier/CLLI code list, in simple Excel spreadsheet, to interested retail CLECs
- If a retail CLEC challenges a wholesale provider's capabilities in a given wire center, arbitrates a dispute resolution process.



# Business UNE-P/Wholesale CLEC Services Must Not Be Eliminated

- While large businesses may be able to justify direct-to-the-door fiber from competitive CLEC switches, small businesses cannot.
- Small businesses are the lifeblood of the economy; they produce nearly all the new job creation in the U.S. They continue to struggle to reduce their costs, to be competitive.
- UNE-P like service, in the great majority of wire centers in the country, is their only opportunity for meaningful local phone savings.
- Even large businesses will need the same service, as the only cost-effective alternative for their smaller and more remote offices.